

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2019-249

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA, URGING THE FLORIDA LEGISLATURE TO REPEAL SECTIONS 403.708, 403.7033, AND 500.90, FLORIDA STATUTES AND REJECT ANY OTHER STATUTES THAT INHIBIT A LOCAL GOVERNMENT'S ABILITY TO REGULATE EXPANDED POLYSTYRENE OR SINGLE-USE PLASTIC BAGS, AND REQUESTING THE SUPPORT OF GOVERNOR RON DESANTIS IN THOSE EFFORTS.

WHEREAS, acknowledging the significant harmful effects of expanded polystyrene on the environment and finding the regulation of expanded polystyrene necessary for the preservation of our environment and the public health, safety, and welfare of City of Coral Gables residents and visitors, in late 2015, the City began the process of regulating this product; and

WHEREAS, the significant negative impact that plastic bags and polystyrene have on the environment and the health, safety, and welfare of Coral Gables residents and properties prompted the City to enact Chapter 34 Nuisances, Articles IX and X of the City Code related to the prohibition of polystyrene and single-use carry out plastic bags respectively; and

WHEREAS, expanded polystyrene, a petroleum by-product commonly known as Styrofoam, is neither readily recyclable nor biodegradable and can take thousands of years to degrade in the environment. Products made from expanded polystyrene have little value, are not accepted in single stream recycling facilities, and cause serious harm and death to wildlife; and

WHEREAS, like polystyrene, single-use plastic bags are detrimental because they do not fully degrade and create the potential for death of land and marine animals through entanglement and ingestion. The expansive usage of single-use shopping bags and their typical disposal rates create an impediment to the City's waste reduction and recycling goals while causing unsightly litter in the City's streets, parks, public places, and waterways; and

WHEREAS, on December 8, 2015, to address significant environmental concerns related to polystyrene, and consistent with the Home Rule powers guaranteed to the City of Coral Gables by the Miami-Dade Home Rule Charter and the Florida Constitution, the City Commission adopted Ordinance 2016-08 on first reading. Ordinance 2016-08 prohibits: (1) city vendors/contractors from, selling or using expanded polystyrene within the City or in completing their duties under contract with the City, (2) special event

permittees from using expanded polystyrene articles during events, and (3) generally prohibits the sale or use of expanded polystyrene by businesses in the City; and

WHEREAS, hand-in hand with the Coral Gables Chamber of Commerce, the City spent several months engaging and educating local business on the effects of Ordinance 2016-08, thereby delaying second reading of the ordinance until February 9, 2016. On July 18, 2016, the Florida Retail Federation, Inc. and Super Progresso, Inc. sued the City of Coral Gables for declaratory judgment and injunctive relief, seeking a declaration that Ordinance 2016-08 was invalid as preempted by Section 500.90, F.S. The City prevailed in the suit, and on February 27, 2017, Judge Cueto of the Eleventh Judicial Circuit found that Section 500.90, F.S., Sections 403.708(9) and 403.7033, F.S. were unconstitutional and thus unenforceable against the City; and

WHEREAS, as a result of the Court's ruling on Sections 403.708(9) and 403.7033 (finding the preemption of single-use plastic bags unconstitutional), the City Commission adopted Ordinance 2017-13 to combat the harmful environmental effects of single use plastic bags; and

WHEREAS, on March 10, 2017, Plaintiffs appealed the Circuit Court's order and on March 13, 2017, the State of Florida joined Plaintiffs in the appeal. Nearly 2 ½ years later, after successful enforcement of the City's ordinances with the support of both residents and the business community, the Third District Court of Appeal found that the trial court erred in concluding that the three statutes are unconstitutional and reversed the lower court's ruling on August 14, 2019; and

WHEREAS, despite the appellate court's ruling, the City remains wholly committed to protecting the environment and Home Rule, and urges the Florida Legislature to eliminate Sections 403.708, 403.7033, and 500.90, Florida Statutes and any other preemption statutes that inhibit a local government's ability to regulate expanded polystyrene and/or plastic bags; and

WHEREAS, the City also requests the support of Governor Ron DeSantis, who has demonstrated respect for both the environment and Home Rule through his recent veto of HB 771, wherein the Legislature attempted to preempt local regulations on single-use plastic straws; and

WHEREAS, in his letter to Secretary of State, Laurel M. Lee withholding his approval and vetoing HB 771, Governor DeSantis said "A number of Florida municipalities, including Sanibel, Ft. Meyers Beach and Miami Beach, have enacted ordinances prohibiting single-use plastic straws. These measures have not, as far as I can tell, frustrated any state policy or harmed the state's interest. In fact, the Florida Department of Environmental Protection has encouraged Florida residents, schools and businesses to reduce plastic straw use. Under these circumstances, the State should simply allow local communities to address this issue through the political process. Citizens who oppose plastic straw ordinances can seek recourse by electing people who share their views."; and

WHEREAS, the local regulation of expanded polystyrene and plastic bags is as important and necessary as the regulation of plastic straws and the City of Coral Gables asks Governor DeSantis to support Home Rule and local efforts to regulate expanded polystyrene and single-use plastic bags;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. That the City Commission hereby urges the Florida Legislature to repeal and reject sections 403.708, 403.7033, and 500.90, Florida Statutes and any other statutes that inhibit a local government’s ability to regulate expanded polystyrene and/or single use plastic bags.

SECTION 3. That the City Commission hereby request Governor Ron DeSantis’ supports in the efforts to support Home Rule and local efforts to regulate expanded polystyrene and single-use plastic bags.

SECTION 4. That the City Commission hereby authorizes the Mayor of Coral Gables to write directly to Governor DeSantis on behalf of the City Commission to request his assistance in these efforts.

SECTION 5. That the City Clerk is directed to transmit certified copies of this resolution to all municipalities within Miami-Dade County, the Florida League of Cities, as well as the City’s representatives in the Florida legislature.

SECTION 6. That this Resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-SEVENTH DAY OF AUGUST, A.D., 2019.

(Moved: Lago / Seconded: Mena)

(Yeas: Mena, Fors, Jr., Keon, Lago, Valdes-Fauli)

(Unanimous: 5-0 Vote)

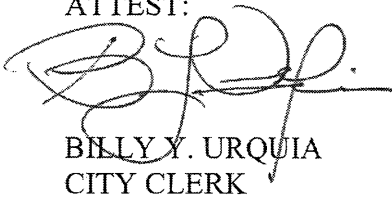
(Agenda Item: G-2)

APPROVED:

RAÚL VALDÉS-FAULI
MAYOR

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a vertical line and a small 'w' or 'v' shape.

ATTEST:

A handwritten signature in black ink, featuring a large, stylized 'B' followed by a horizontal line and a small 'p' or 'q' shape.

BILLY Y. URQUIA
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

A handwritten signature in black ink, featuring a large, stylized 'M' followed by a vertical line and a small 's' or 'l' shape.

MIRIAM SOLER RAMOS
CITY ATTORNEY

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2019-250

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA, STAYING ENFORCEMENT OF CHAPTER 34, ARTICLES IX AND X OF THE CITY CODE IN RESPONSE TO THE RULING BY THE THIRD DISTRICT COURT OF APPEAL IN FLORIDA RETAIL FEDERATION, INC. ET AL. V. THE CITY OF CORAL GABLES, FLORIDA, CONTINUING ENFORCEMENT OF SECTIONS 2-730, 62-262, AND 62-263 OF THE CITY CODE, AND ENCOURAGING BUSINESSES TO CONTINUE COMPLYING WITH CHAPTER 34, ARTICLES IX AND X, BY NOT RESUMING THE USE OF PRODUCTS MADE WITH EXPANDED POLYSTYRENE OR SINGLE-USE PLASTIC BAGS.

WHEREAS, acknowledging the significant harmful effects of expanded polystyrene on the environment and finding the regulation of expanded polystyrene necessary for the preservation of our environment and the public health, safety, and welfare of City of Coral Gables residents and visitors, in late 2015, the City began the process of regulating this product; and

WHEREAS, on December 8, 2015, the City Commission adopted, on first reading, Ordinance 2016-08; and

WHEREAS, the City engaged the business community and delayed second reading of the ordinance in order to allow time for input from retailers, the Coral Gables Chamber of Commerce, and the Business Improvement District; and

WHEREAS, on February 9, 2016, the City Commission adopted Ordinance 2016-08, on second reading, providing for an immediate effective date but stipulating that enforcement would not begin until August 9, 2016 or 180 days after second reading, in order to allow for an educational campaign and a grace period to ensure a smooth transition; and

WHEREAS, Ordinance 2016-08 prohibits: (1) city vendors/contractors from, selling or using expanded polystyrene within the City or in completing their duties under contract with the City, (2) special event permittees from using expanded polystyrene articles during events, and (3) generally prohibits the sale or use of expanded polystyrene by businesses in the City; and

WHEREAS, on July 18, 2016, the Florida Retail Federation, Inc. and Super Progresso, Inc. ("Plaintiffs") filed a Complaint against the City of Coral Gables for declaratory judgment and

injunctive relief and seeking a declaration that Ordinance 2016-08 was invalid as preempted by Section 500.90, F.S.; and

WHEREAS, on February 27, 2017, Eleventh Judicial Circuit Judge Jorge E. Cueto granted the City's Motion for Summary Judgment finding (1) Section 500.90, F.S. (preempting the regulation of expanded polystyrene) violates the Miami-Dade Home Rule Amendment, is an impermissible special law aimed at the City of Coral Gables, violates the doctrine of non-delegation of powers, and is arbitrary and capricious, and (2) Sections 403.708(9) and 403.7033, F.S. (preempting the regulation of single-use plastic bags) unconstitutionally vague; and

WHEREAS, as a result of the Court's ruling finding the preemption of single-use plastic bags unconstitutional, on May 9, 2017, the City Commission, again finding that the regulation is necessary for the preservation of our environment and the public health, safety, and welfare of City residents, visitors, and future generations, adopted Ordinance 2017-13 providing an immediate effective date, but stipulating that enforcement would not begin for one year after second reading, in order to allow for an educational campaign and a grace period to ensure a smooth transition; and

WHEREAS, Ordinance 2017-13 prohibits (1) special event permittees from using single-use plastic bags during events, and (2) generally prohibits the use of single-use plastic bags by businesses in the City; and

WHEREAS, on March 10, 2017, Plaintiffs appealed the Circuit Court's order, on March 13, 2017, the State of Florida joined Plaintiffs in the appeal, and in December 2017, oral argument was held before a panel of the Third District Court of Appeals; and

WHEREAS, on August 14, 2019, the Third District Court of Appeal found that the trial court erred in concluding that the three statutes are unconstitutional and reversed the lower court's ruling; and

WHEREAS, the City remains wholly committed to protecting the environment and Home Rule, is currently evaluating next steps both judicially and legislatively, and remains optimistic that the use expanded polystyrene and single-use plastic bags will not resume; and

WHEREAS, in accordance with the August 14th ruling, the City Commission is staying enforcement of Chapter 34, Articles IX and X of the City Code, and continuing enforcement of Sections 2-730 (use of expanded polystyrene by City contractors/vendors), 62-262 (use of expanded polystyrene by special event permittees), and 62-263 (use of single-use plastic bags by special event permittees); and

WHEREAS, during the stay, the City Commission urges businesses in the City, in the best interest of the environment, to continuing complying with Chapter 34, Articles IX and X by not

using products made with expanded polystyrene and not resuming the use of single-use plastic bags; and

WHEREAS, during the August 27, 2019 City Commission meeting, the City Commission directed the City Attorney to proceed with appealing the ruling by the Third District Court of Appeal through the Florida Supreme Court;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. That the City Commission hereby directs a stay in the enforcement of Chapter 34, Articles IX and X of the City Code, and specifically directs continued enforcement of Sections 2-730, 62-262, and 62-263.

SECTION 3. That the City Commission hereby urges business located within the City to continue protecting the environment by not using single-use plastic bags or products made with expanded polystyrene. The City Commission further officially requests that the Coral Gables Chamber of Commerce and Business Improvement District assist in this effort by encouraging businesses, through official green initiative programs or otherwise, to continue refraining from the use of these harmless products.

SECTION 4. That this Resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-SEVENTH DAY OF AUGUST, A.D., 2019.

(Moved: Lago / Seconded: Mena)

(Yeas: Fors, Jr., Keon, Lago, Mena, Valdes-Fauli)

(Unanimous: 5-0 Vote)

(Agenda Item: J-2)

APPROVED:



RAÚL VALDÉS-FAULI
MAYOR

ATTEST:



BILLY Y. URQUIA
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



MIRIAM SOLER RAMOS
CITY ATTORNEY